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Claims for Interest in the Fight against Fraud to the Union's Financial Interests: a Practical Solution

CJEU Judgment 29 March 2012, Pfeifer & Langen KG, Case C-546/10

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Abstract

Council Regulation No 2988/95 on the protection of the European Communities' financial interests continues to give rise to preliminary questions referred by Member State courts. This is the logical consequence of the structure and organisation of what is referred to as the 'PIF' Regulation (protection des intérêts financiers). With this Regulation, a general legal framework was created for checking and penalising 'irregularities' and fraud that prejudices the European Union budget, to be carried out by the Member States. Its provisions, which evidently have direct effect within the national legal orders, may be supplemented by the European sectoral legislator and by national law. Furthermore, the Regulation offers the possibility to depart from the general rules within certain boundaries, equally in both European sectoral rules and national rules. Regulation No. 2988/95 thus constitutes a complex, multi-level (European and national provisions) and multi-source (general and sectoral European Regulations) legal system aimed at protecting the financial interests of the European Union against fraud and other illegal acts. This makes it difficult for national courts to correctly apply the PIF Regulation. The judgment in Pfeifer & Langen KG shows that, (also) from the perspective of equal conditions for economic operators, it is desirable to have more detailed European provisions on administrative measures and the limitation periods relating to the imposition of such measures.

1 Introduction

Enforcement of EU law enjoys high priority within the European Union. This is especially true for the area of European grants and subsidies where fraud and irregularities are frequently reported. Continual negative reporting by the press and the critical Annual Reports of the European Court of Auditors, year after year, neither contribute to the popularity nor to the acceptance of the European Union. From the end of the 1980s onwards, it became more and more clear that the European Union is suffering huge financial losses, caused in part by the fact that the Member States do not always effectively carry out such checks and enforcement tasks. As a result of this growing awareness, the Treaty of Maastricht (1992) introduced the obligation for both the Community and the Member States to combat fraud and other illegal activities. Nowadays, article 325 TFEU provides that the European Union and the Member States must counter fraud and any other illegal activities affecting the financial interests of the European Union through measures that will act as a deterrent. These must be such 'as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies'.

In the majority of cases, specific measures to protect the financial interests of the European Union must be taken by the Member States themselves, while for the most part implementation of the relevant European policies rests with them as well. Under the principle of procedural autonomy, enforcement activities by the Member States are basically governed by their national laws. In the course of the last decades, however, national enforcement andpenalisation practices were rapidly 'Europeanized' as a result of both restrictions formulated in European case law and sectoral European legislation. Having started with the area of Agricultural Policy, the European Union legislature is increasingly prescribing specific checks, measures and penalties in a variety of policy areas. The PIF Regulation may be considered an acme in this development. It was the result of a resolution by the European Parliament, in which the Commission was asked to propose a general legal framework on European administrative penalties and a Regulation in which far-reaching powers are laid down with regard to on the spot checks and inspections by what used to be the Task Force for the Co-ordination of Fraud Prevention (UCLAF), now the European Anti-Fraud Office (OLAF). The proposal subsequently issued by the Commission has caused much debate between the European Parliament, which tightened the proposal on two occasions, and the Council of Ministers, which did not adopt any of the amendments in the end.[1]

Legal history reveals the long-time battle between the European Union and the Member States regarding enforcement and penalisation. The Member States put up considerable resistance against the restriction of their freedoms in this area. In the meantime, a solid foundation was laid in several treaties for European anti-fraud policies. However, as a result of the very general wording of the provisions of the PIF Regulation, and the possibility of supplementing and departing from these, its application is leading to a considerable number of complex questions in national proceedings. In our view, it is time to take the

1 See the original Commission Proposal for Regulation No 2988/95 (COM(94) 214 final), the report of the Budgetary Control Committee (A4-0049/95) and the report of the Budgetary Control Committee ensuing from the Council's agreement on a common approach (A4-0296/95).

next step in European legislation, but before taking up this point we will first come back to the *Pfeifer & Langen KG* case and Regulation No 2988/95.

2 Regulation No 2988/95

The preamble of Regulation No 2988/95 clearly states that '... acts detrimental to the Communities' financial interests must [...] be countered in all areas'. In order to enhance combating fraud, the preamble indicates that a common set of legal rules is needed for all areas covered by Community policies. A number of general principles (mainly a codification of the Court's prior case law on the imposition of administrative penalties), general provisions on administrative measures and penalties, and a number of general rules in the area of checks and inspections have therefore been laid down.

In the first article of the Regulation, the term 'irregularity' is defined as 'any infringement of a provision of Community law resulting from an act or omission by an economic operator,[2] which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.'

The second article underlines a number of basic principles. Measures and penalties must be 'effective, proportionate and dissuasive'; no administrative penalty may be imposed unless a Community act prior to the irregularity has provided for it, and, in case of subsequent amendments to provisions, the less severe provision applies retroactively (*lex mitior principle*).[3] Last but not least, the article provides that Community law determines the nature and scope of the administrative measures and penalties with due regard to the nature and seriousness of the irregularity, the advantage granted or received and the degree of responsibility. The procedures for the application of Community checks, measures and penalties are governed by the laws of the Member States (principle of procedural autonomy) subject, however, to the Community law applicable.

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2 See CJEU 21 December 2011, C-465/10 (*Chambre de commerce et d'industrie de l'Indre*) in which the Court ruled that also a legal person governed by public law (as a recipient of a subsidy from the European Union budget), can be treated, for the purposes of applying Regulation No 2988/95, as an economic operator which is alleged to have infringed a provision of European Union law (par. 45). Confusing in that perspective: GCEU 19 September 2012, T-265/08 (par. 36), in which the General Court states that 'in essence, Regulation 2988/95 puts in place a general legal framework intended to combat fraud which, by definition, cannot be committed by a national authority'.

3 See ECJ 1 July 2004, C-295/02 (*Gisela Gerken*), ECJ 4 May 2006, C-286/05 (*Reinhold Haug*); ECJ 8 March 2007, C-45/06 (*Campina*); ECJ 11 March 2008, C-420/06 (*Rüdiger Jager*). As well as the reference in the preamble to the ne bis in idem principle, which is further expressed in Article 6 of Regulation No 2988/95, see CJEU 5 June 2012, C-489/10 (*Bonda*).

The articles governing the periods of limitation and implementation (art. 3); the form and nature of the measures and penalties (arts. 4 and 5); and their relation to criminal proceedings (art. 6) are of great relevance for national legal practice. Article 3 in particular has led to interesting preliminary rulings on the relation between Regulation No 2988/95, sectoral European regulations and national (sectoral and general) provisions. The ruling in *Pfeifer & Langen KG* is part of this type of case law. It specifically deals with the question as to which limitation period is applicable to the claim for interest due over amounts unduly paid. Before analysing the judgment, we will broadly outline the most important case law preceding the judgment in *Pfeifer & Langen KG*.

3 Prior Case Law

Several components of the provisions in Article 3 of the PIF Regulation governing the limitation period have led to preliminary questions referred to the European Court. More than once, the Court had to ponder, for instance, the question as to how 'continuous or repeated irregularities' are to be interpreted, for this could be decisive for the moment at which a limitation period commences.[4] On several occasions, the Court was asked to define when an act of the competent national authorities should be considered an act of investigation or an act within court proceedings which would interrupt the limitation period.[5] Moreover, it only became clear from the Court's judgments that the period of limitation laid down in Article 3 is applicable to both the administrative measures defined in Article 4 and the administrative penalties defined in Article 5 of the PIF Regulation.[6]

The prior case law concerning the relation between framework regulations, sectoral regulations and national provisions on limitation periods is of particular relevance for the *Pfeifer & Langen KG* case. In some instances, the sectoral *European* legislator is allowed to supplement and on occasion depart from the Regulation.[7] It also allows supplementation of and departure from the Regulation in national law, in any case by stricter rules. In this context, one of the questions referred by national courts was about the*way in which* a different limitation period was to be laid down in national law: in general law, in provisions specific-

4 See ECJ 2 December 2004, C-226/03 P (*José Marti* Peix); ECJ 11 January 2007, C-279/05 (*Vonk Dairy Products*) and CJEU 21 December 2011, C-465/10 (*Chambre de commerce et d'industrie de l'Indre*).

5 ECJ 24 June 2004, C-278/02 (*Handlbauer*); CJEU 28 October 2010, C-367/09 (*SGS Belgium*) and General Court 15 April 2011, T-297/05 (*IPK/Commissie*).

6 ECJ 24 June 2004, C-278/02 (*Handlbauer*).

7 See, for instance, Articles 25 and 26 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules of competition laid down in Articles 81 and 82 of the Treaty, relating to the limitation period for imposing and enforcing penalties.

ally tailored to penalties in general or to penalties ensuing from established irregularities with regard to European money?[8] In the *Vosding* case, for instance, the preliminary question asked was whether Article 3 precluded Germany from applying the longer period of limitation of thirty years that was prescribed by the German Civil Code (*Bürgerliches Gesetzbuch* [BGB]). The Court answered the question in the negative: application of a national term laid down in general law was permitted. According to the Court, the wording of Article 3 (3) of Regulation No 2988/95 did not expressly provide an answer to the question as to whether a longer national term must be found in rules specifically governing recovery of, in this case, export subsidies, or that a term from a more general national regulation may be applied.[9]

Another question answered in case law was the limits set by the legal principles of European Union law to the application of alternative national limitation periods. In its *Vosding* judgment, the Court held that the principle of legal certainty did not preclude application of the limitation period laid down in the German Civil Code with regard to administrative measures, because such application had already been established case law practice in Germany before Regulation No 2988/95 had come into effect. However, there was a sequel to the *Vosding* judgment. Perhaps encouraged by the opinion of the Advocate-General in the *Vosding* judgment, the German court referred more preliminary questions in that same case.[10] This time, the essence of the questions referred was whether a period of thirty years was *compatible* with the principles of legal certainty and proportionality under European Union law. In the *Ze Fu Fleischhandel* judgment, the Court held, this time based on more comprehensive reasoning, that application (by analogy) of a national period of limitation – one that in effect had not been created for the purpose of prosecuting irregularities (as in Article 3 (1) Regulation No 2988/95), but for the purpose of recovering advantages wrongly granted – was not incompatible, *in principle*,with the principle of legal certainty.[11] It was up to the national court, however, to assess the extent to which application (by analogy) by the German court of this period of limitation was foreseeable for the economic operator. The German court did not have the opportunity to make such an assessment, however, because the Court also held that Germany was not permitted to apply a term of thirty years, as a thirty-year term was viewed as too long. The Court first considered that, according to the European Union legislature, a term of four, or even three years, was sufficient for the objective pursued, which was prosecution of irregularities

8 ECJ 29 January 2009, C-278/07 (*Vosding*).
9 It must be noted that in a more recent judgment in *Ze Fu Fleischhandel* the Court did observe that it is easier for an economic operator if the period of limitation has been laid down in specific legislation (CJEU 5 May 2011, C-201 and C-202, par. 33).
10 See the Opinion by the AG E. Sharpton of 25 September 2008, C-278/07, pt. 71 (*Vosding*).
11 CJEU 5 May 2011, C-201/10 and C-202/10 (*Ze Fu Fleischhandel*).

by the national authorities. The Court furthermore considered that a term of thirty years could encourage the authorities to delay prosecution. In addition, a term of thirty years would lead to too long a period of legal uncertainty for economic operators, who would also encounter problems proving their case as a result. The Court held that a term of thirty years thus exceeded that which was necessary in prosecuting irregularities. In consequence, the application of the German general limitation period was not compatible with the principle of proportionality under European Union law. It became clear from the judgments in *Vosding* and *Ze Fu Fleischhandel* therefore, that the legal principles laid down in European Union law (also) impose restrictions on the freedom of Member States to depart from the PIF Regulation.

Interesting finally is the question as to the extent of the departure afforded to the Member State in national law in cases, in which the European Union legislature has deviated from the PIF Regulation or has supplemented it in sectoral law. Do the Member States still have the same degree of freedom in that event to regulate these matters? Or must it be presumed that there is no longer such freedom? This was the question referred by a Belgian court in the *Corman* judgment. Unfortunately, the European Court of Justice had no opportunity to provide an answer, because the period in question laid down in the European sectoral regulation could not be regarded as a (shorter) period of limitation as referred to in Article 3 (1) of Regulation No 2988/95. In this case, the European Union legislature had not provided for a special sectoral period of limitation, so that the general period of limitation of Article 3 (1) of Regulation No 2988/95 proved to be applicable.[12]

4 The Pfeifer & Langen KG Case

Pfeifer & Langen KG (P&L) is a large German company that mainly trades in sugar. The countries of the European Union are amongst the world's major sugar producers and the European Union financially supports producers within certain quotas. Amounts of sugar above these quotas must be sold on the world market without the aid of export subsidy, or be stored so that it can be sold in subsequent years on the basis the quotas for those years. Accordingly, Regulation No 1785/81 provided for a compensation scheme for storage costs, of which Pfeifer & Langen KG made use. In 2003, when the German authorities discovered that during the period between 1994 and 1997 P&L had overstated the quantities of sugar in its application for funds, they decided to recover a sum of money. The recovery decision stated that the sums reclaimed would bear interest, the precise amount to be fixed in a later decision.

12 CJEU 22 December 2010, C-131/10 (*Corman*), par. 33-51.

In 2006, after appellate administrative proceedings and in the course of administrative judicial proceedings (the main proceedings, which are still on-going) P&L paid the sum of € 469,421.12. In 2007, the German authorities issued an interest decision: under German law, interest totaling € 298,650.98 was due on the recovery sum.

P&L proceeded by again bringing the case before the German administrative courts. The issue in these (second) national proceedings was whether the claim for interest was (in part) time-barred. Although the German Civil Code provides for a limitation period with regard to interest claims, the German Federal Administrative Court first wished to ascertain whether the limitation period laid down in Article 3 of Regulation No 2988/95 was applicable. If so, this would mean that the German period of limitation, which was shorter than the minimal term of four years prescribed by the PIF Regulation, could not be applied.[13] Doubts on this point had arisen by the fact that the German Federal Finance Court, in a case concerning export refunds, had held, that Article 3 applied to the limitation period for interest linked to the reimbursement of sums wrongly received within the meaning of the measures laid down in Article 4 of the PIF Regulation. The German Administrative Court therefore referred the following preliminary question to the European Court (paragraph 34):

'Does Article 3 of [Regulation No 2988/95] apply also to the limitation period for claims in respect of interest due under national law in addition to the repayment of the advantage wrongly obtained on the basis of an irregularity?'

5 The Court's Ruling

Before arriving at an answer to the (first) preliminary question, the Court dealt with the fundamental question as to whether on the basis of national rules Member States were permitted to charge interest in recovering European monies unduly paid, where the European Union legislature had not provided for such a provision. Relevant here isArticle 4, (1) and (2) of Regulation No 2988/95, which provides that as a general rule 'irregularities' will involve withdrawal of the wrongly obtained advantage by an obligation to pay or repay the amounts due or wrongly received, and that the necessary measures will be limited to the withdrawal of the advantage obtained plus interest – on a flat-rate basis – '*where so provided for*'. In the *P&L* case, none of the relevant European regulations contained a provision on interest.

13 See ECJ 24 July 2004, C-278/02 (*Handlbauer*), paras 24-35.

According to the Court, the provision did not preclude national authorities from applying national provisions on interest claims in this type of situation. The Court referred to its 1982 judgment in *Fromme* (Case 54/81).

46 As regards, first, the very principle of the collection of interest being provided for by national law in a situation where European Union law did not provide for the collection of such interest, the Court has held that it was compatible with European Union law, when recovering an advantage wrongly received from the European Union budget, for a Member State to recover, in accordance with its national law, interest which, in the absence at that time of rules requiring it to be paid to the Community, accrued to its own budget (see Case 54/81 Fromme [1982] ECR 1449, paragraph 8).

47 The same must be true where that interest, the collection of which is not required by European Union law, is, in the context of measures financed by the EAGGF, refunded to the European Union budget. Therefore, in such a situation, as in the main proceedings, European Union law, in particular Article 4(2) of Regulation No 2988/95, does not preclude the Member States from providing in their national law for the recovery of default and/or compensatory interest, in addition to recovering advantages wrongly received from the European Union budget, which is, in the context of measures financed by the EAGGF, refunded to the European Union budget.

The Court added that, since the claim for interest, added to the recovery of the financial advantage, was based on national law, it was also for the national legislator to lay down the methods and conditions applicable to the recovery decision. Although it may be inferred from this that the limitation rules of Article 3 of Regulation No 2988/95 are not applicable, the Court expressly dealt with this point as follows:

50. In that regard, while the recovery of an advantage wrongly received from the European Union budget is subject to the limitation rules laid down by Article 3 of Regulation No 2988/95, it is not however apparent from the wording of that provision or the scheme of the regulation that those rules are intended to govern the recovery of interest where, as is the case in the main proceedings, the recovery of that interest is required, in any event, not by sectoral rules but by national law.

The limitation period for proceedings such as the recovery of the wrongly received storage costs is therefore governed by Article 3 of the PIF Regulation, whereas the limitation period with regard to the additional interest claim provided for by German law is governed by German law. The limitation periods for the two claims are not entirely disconnected, however. The Court stated that, because of the incidental nature of the claim for interest, it could not be recovered where the principal recovery claim was time-barred (paragraph 51).

In this respect, there is an 'indirect link' between Article 3 of Regulation No 2988/95 and the expiration of a claim for interest ensuing from the national law. Finally, the Court recalled that under Article 325 TFEU the Member States are obliged to take measures to counter fraud that prejudices the European Union budget equal to those taken to tackle fraud affecting the national budget.

6 Analysis

On the basis of the foregoing, it may be concluded that the Court interpreted Article 4 (2) of Regulation No 2988/95 in such a way that the expression 'where so provided for' is to be taken to mean either a sectoral European provision on interest claims or a national one. According to the Court, the European Union legislature did not intended to give exclusive competence to define interest provisions to the sectoral European Union legislature. In cases where the European sectoral legislator did not provide for claims for interest in addition to recovery decisions, the Member States were at liberty to enact a new provision or to apply an existing (general) provision allowing the charge of interest in recovery proceedings. The Member State is even under an obligation to do so where this is standard procedure in national recovery proceedings. The limitation period for interest claims is then governed by national law, however, it is not permitted to claim interest if the possibility of recovery of the wrongly received advantage is time-barred.

In theory, the Court could have arrived at another conclusion regarding the legal basis of the claim for interest. After all, at the time of the *Fromme* judgment, the applicable Community law did not provide for any rules on the collection of interest in recovery proceedings. The Court in this case ignored that the general Regulation No 2988/95 had been defined afterwards. Its aim was to introduce '*general rules [.....] Relating to homogeneous checks and to administrative measures and penalties concerning irregularities with regard to Community*' (see Article 1 (1) of Regulation No 2988/95 and the Court in paragraph 36 of this judgment). Furthermore, Article 2 (3) of Regulation No 2988/95 departs from the principle that Community law determines 'the nature and scope of the administrative measures and penalties necessary for a correct application of the rules in question, having regard to the nature and seriousness of the irregularity, the advantage granted or received, as well as the degree of responsibility.' Article 4 provides that, as a general rule, any irregularity involves withdrawal of the wrongly obtained advantage and that 'where so provided for', interest may be charged. Only where procedures for the *application* of Community measures are concerned, does the Regulation refer to national laws.

Given these facts, the Court could have ruled that the (sectoral) European legislator had exclusive competence. In that case, the collection of interest (an administrative measure as referred to in Article 4 of Regulation No 2988/95) would only be possible where the European Union legislature had provided for a legal basis in EU sectoral rules. The advantages of this approach are that more legal certainty would have been provided for economic operators and that their actions would have been governed by the same enforcement rules.

This outcome would not have been very obvious, however. The Court seems to attach rather more importance to combating fraud and irregularities than to achieving a common legal framework and uniform punitive practices for the Member States.[14] In this context, it has always given priority to the procedural autonomy enjoyed by the Member States in enforcement decisions. In solid case law, it has allowed stricter national measures than required under European Union law.[15] It fits with this type of case law to permit Member States to themselves create a legal basis for claims for interest. In effect, the Court in such case law focuses on maximum protection of the European Union budget, rather than giving preference to legal certainty and equal market conditions for economic operators.

The Court could also have arrived at a different decision with regard to the question as to which limitation rules are applicable. Advocate-General Sharpton, in the good company of the European Commission, took the view, for instance, that Article 3 of Regulation No 2988/95 was also applicable to interest claims provided for in national law. She underpins this view (paragraphs 61-73) with the observation that the purpose of collecting interest in these cases is consistent with the objectives of the Regulation, namely to compensate the European Union budget for the time that it was unable to make use of the recovered sum in question and to eliminate any advantage P&L might have enjoyed as the recipients of overpayments. Thus, the measure fell within the notion of 'proceedings' as referred to in Article 3 Regulation No 2988/95. According to Sharpston, as a consequence, the four-year period laid down in Article 3 (1) of Regulation No 2988-95 governs the limitation period in respect of claims for interest made under national law, where a wrongful advantage is obtained as a result of an irregularity.

The Court did not adopt the view of the Advocate-General in this respect. As has been referred to above, the Court considered that, in principle, the Member States have to define the modalities and conditions where interest is collected on the basis of national law. Where European Union law does not provide for limitation rules for the collection of interest, the national rules apply. However, the incidental nature of the interest charge leads to the 'indirect' restriction, that upon expiration of the principal claim, (pursuant to Article 3 of

14 See, for a recent example, CJEU 13 December 2012, C-670/11 (*FranceAgriMer*).
15 Recently in CJEU 24 May 2012, C-188/11 (*Hehenberger*).

Regulation No 2988/95 or sectoral rules) the possibility of collecting interest no longer exists.

As previously stated, it was precisely its incidental nature that constituted an argument for the Advocate-General to assume that Article 3 of Regulation No 2988/95 did apply directly to the interest claim ensuing from a recovery decision. Although in view of the close link between the principal claim and the claim for interest this reasoning may be acceptable, it is our view that the Court's approach is to be preferred as it leads to (more) clear regulation of interest claims in these type of cases: the provisions of the PIF Regulation are not suited to be readily applied to interest claims. Claims for interest cannot be made, for instance, at the time the irregularity was committed, as Article 3 of the Regulation seems to suggest. The Regulation does not even provide for the most basic rules on interest claims, such as the rate of interest to be charged. The approach taken by the Advocate-General would therefore result in a 'complex' situation, in which the duration of the limitation period is determined by Article 3 (1) of Regulation No 2988/95, whereas all other aspects would be governed by rules of national law to be applied in conformity with the Member States' general obligation under Article 325 TFEU and the general principles of European Union law.

As limitation rules imply interaction between provisions on the commencement, duration and interruption of the term, it makes more sense, in our view, as a rule to 'fully' regulate limitation rather than making it up from several legal regimes. The individual components, such as duration, commencement and interruption of the term, are after all interdependent. Choices in relation to these components are contingent on the nature of the specific claim and the interests the legislator aims to serve or protect. If fraud or any other irregularity is characterised as very serious, there will be a need for rules that prescribe a longer, rather than a shorter, period of limitation for the power to prosecute. If, in addition to this, the legislator also wishes to encourage the authorities entrusted with enforcement and carrying out checks to speed up the prosecution for irregularities, a shorter limitation period that allows for relative easy interruption, is indicated.[16] A legal regime 'composed' of different (European and national) rules fails to do justice to a full weighing up of the choices that form the basis of a specific set of rules. The balance between the individual components will be distorted and parts of the various limitation systems will be applied to situations for which they were not intended. Sharpston also notes the need for a package of rules governing the limitation period for interest claims (paragraph 81). The Court therefore rightly opted for a practical solution whereby

16 Cf. CJEU 5 March 2011, C-201 and C-202, par. 44 (*Ze Fu Fleischhandel*).

the limitation period of the principal claim is solely governed by Article 3 of Regulation No 2988/95, with the possible application of a longer term under national law, and the limitation period of the claim for interest is solely governed by national law (unless the principal claim is time-barred).

7 In Conclusion: More European Rules Please

The *Pfeifer & Langen KG* case illustrates that a general framework regulation at the European level easily leads to complex legal questions, in particular where other legislators are allowed considerable freedom to supplement the Regulation and depart from it. The PIF Regulation is rather sparse and lacking in detail. It offers little clear and directive indication of the scope of the individual provisions. The same is true for the way in which, and the limits within which, the Member States may depart from the Regulation. Questions of a fundamental nature often have to be answered by the CJEU. Frequently, the Advocate-General and the Court arrive at different answers, as was the case in *Pfeifer & Langen KG* concerning the application of Article 3 (1) of Regulation No 2988/95 to interest claims based in national law.

Not only does the limited development of the Regulation produce uncertainty about its interpretation and its relation to the national law of the Member States but it also leads to differentiation between the Member States in those parts where, in our view, conformity is called for. The Court's view in *Pfeifer & Langen KG* shows that whether or not interest is claimed in recovery proceedings depends on the Member State in which financial aid from the European Union budget is requested. It becomes clear from the judgment that the amounts concerned are not insignificant. It is desirable to achieve uniformity in this area. This may not only be concluded as a result of the Court's judgment but this point is also argued by the Advocate-General Sharpston in paragraph 79 of her opinion. In a recent Special Report, the European Court of Auditors also recommends harmonisation of the rules in relation to the recovery of undue payments made under the Common Agricultural Policy, with the inclusion of the collection of interest.[17]

After seventeen years, it is time to revise Regulation No 2988/95: it needs to be brought up to date in line with the Court's case law. It would be advisable to tighten the general rules, whereby attention is paid to creating equal conditions and providing legal certainty for economic operators, in addition to protecting the financial interests of the European Union. An interesting proposal for a Directive on the fight against fraud to the Union's financial interests by

17 European Court of Auditors, *Recovery of undue payments made under the Common Agricultural Policy*, Special Report No. 8/2011 (at www.eca.europa.eu).

means of criminal law has recently been made by the European Commission.[18] It is an attempt to reduce the risks of divergent national practices and to ensure a uniform interpretation and a homogeneous way to meet all the necessary prosecution requirements in cases of fraud, corruption, money laundering and obstruction of public procurement procedures. Divergent approaches should also be avoided in administrative national practices.[19]

18 COM(2012) 363 /2, http://ec.europa.eu/anti_fraud/documents/pif-report/pif_proposal_en.pdf.
19 This point is argued again by AG Sharpston in par. 48 of her Opinion in the Agroferm Case of 24 Januari 2013 (Case 568/11).